



# BASIC LAW BULLETIN

## Editor's Note

In the "Focus" section of this issue, we shall examine how economic, social and cultural rights are protected under the Basic Law by the application of the ICESCR in the HKSAR. This article discusses the nature of the rights conferred by the Covenant, the parties' obligations, and how those rights are given effect.

BL 39(1) stipulates that the provisions of ICESCR as applied to Hong Kong "shall remain in force and shall be implemented through the laws of the HKSAR". The ICESCR has not been incorporated into the domestic law of the HKSAR by a single piece of legislation. Rather, individual provisions of the Covenant are implemented by the relevant provisions of the Basic Law and different pieces of local legislation as well as other non-legislative measures.

Although the ICESCR provisions are not directly enforceable in the Hong Kong courts, as they have not been directly incorporated into domestic law, the Covenant may be used as a framework within which Government decisions or discretions are to be made or exercised. We give examples of how our courts refer to the ICESCR and the views of the United Nations Committee on Economic, Social and Cultural Rights in deciding cases that engage the Covenant rights. We also discuss various rights recognized in the ICESCR in order to gain a proper understanding of the requirements of the Covenant.

A summary of two CFA and one CA decisions can be found in the "Judgment Update". They cover the following constitutional issues:

- Whether, and in what circumstances, on the true construction of the Places of Public Entertainment Ordinance (Cap. 172), an entertainment which is presented or carried on in a public street or other publicly accessible open space is one for which the organiser is required to obtain a licence and, if so, whether such provisions are inconsistent with the constitutionally protected freedom of public demonstration and assembly and freedom of expression.
- What must a child or young adult applicant, who is a non-Chinese national born in Hong Kong and whose application is made before he or she reaches the age of 21, establish in order to satisfy the requirement under BL 24(2)(4) of "having taken Hong Kong as [his or her] place of permanent residence" and whether, and under what circumstances, a visitor exempted from registration may qualify to obtain Hong Kong identity card as a non-permanent resident within the meaning of BL 24(4).
- Whether a refusal of leave to appeal from the CFI under s. 81(4) of the Arbitration Ordinance (Cap. 609) bringing finality to the proceedings with no further avenue of appeal was unconstitutional in that it disproportionately restricted the power of final adjudication of the CFA under BL 82.

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